

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 16, 2023

FILED
06/21/2023
Clerk of the
Appellate Courts

IN RE STEPHANIE D. ET AL.¹

**Appeal from the Juvenile Court for Sumner County
No. 2019-JV-337A David Howard, Judge**

No. M2023-00780-COA-R3-JV

A father appeals an order transferring jurisdiction over his minor children to West Virginia. Because the father did not file his notice of appeal with the clerk of the appellate court within thirty days after entry of the final order as required by Tennessee Rule of Appellate Procedure 4(a), we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

FRANK G. CLEMENT, JR., P.J., M.S., ANDY D. BENNETT, and W. NEAL MCBRAYER, JJ.

David D., Gallatin, Tennessee, pro se.

Clifton Wade Barnett and Stephanie Renee Reeves, Nashville, Tennessee, for the appellee, Tennessee Department of Children’s Services.

MEMORANDUM OPINION²

Stephanie D. and Ryder D. were adjudicated dependent and neglected in 2019. On February 2, 2022, the trial court granted full legal and physical custody to a family in West Virginia and closed the case. The West Virginia Family subsequently filed a petition for adoption in the Circuit Court for McDowell County, West Virginia. On December 19,

¹ This Court has a policy of protecting the identity of children by initializing the last names of the parties, relatives, and foster parents.

²A case designated as a memorandum opinion “shall not be published, and shall not be cited or relied on for any reason in any unrelated case.” Tenn. Ct. App. R. 10.

2022, the West Virginia court, acting under the belief that the parents' rights had been terminated on February 2, 2022, granted the petition for adoption.

On March 13, 2023, the children's father, David D. ("Father"), filed a pro se Motion to Set Court Date asserting he still has parental rights and is due to be released from custody in December of 2023. Upon learning of the West Virginia adoption order, the trial court held a conference with the judge of the West Virginia Court under the Uniform Child Custody Jurisdiction and Enforcement Act, Tenn. Code Ann. § 36-6-201 et seq., and elected to relinquish jurisdiction over the children to the West Virginia Court. On April 3, 2023, the trial court entered an order transferring jurisdiction to the Circuit Court for McDowell County, West Virginia, and denying Father's Motion to Set Court Date as moot without prejudice to Father renewing his motion in the West Virginia court. Father filed his notice of appeal with the clerk of this Court on May 15, 2023.

Rule 4(a) of the Tennessee Rules of Appellate Procedure requires that a notice of appeal be filed with the clerk of the appellate court within thirty days after entry of the judgment appealed. Father did not file his notice of appeal with the clerk of this Court until forty-two days after entry of the judgment. We recognize that Father first filed a "Motion to Appeal" with the clerk of the trial court on April 27, 2023. However, Rule 4(a) requires the notice of appeal to be filed with the clerk of the appellate court, not the clerk of the trial court. A notice of appeal filed with the trial court clerk is a nullity and does not initiate an appeal as of right or extend the time for filing a notice of appeal in this Court.

We have also determined that Father's appeal is not saved by the application of Tennessee Rule of Appellate Procedure 20. Because Father is an inmate proceeding pro se, his notice of appeal would be considered timely if it were delivered to the appropriate individual at his correctional facility within the time fixed for filing. Tenn. R. App. P. 20(g). However, the envelope containing the notice of appeal demonstrates that the notice was not delivered to the appropriate individual at Father's correctional facility within the thirty-day time limit.

The thirty-day time limit for filing a notice of appeal with the clerk of the appellate court is mandatory and jurisdictional. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004); *Binkley v. Medling*, 117 S.W.3d 252, 255 (Tenn. 2003). This Court can neither waive nor extend the time period. Tenn. R. App. P. 2 and 21(b); *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 868 n.1 (Tenn. Ct. App. 2008); *Jefferson v. Pneumo Servs. Corp.*, 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985). The failure to file a timely notice of appeal deprives this Court of jurisdiction to hear the matter. *Flautt & Mann*, 285 S.W.3d at 869 n.1.

Finally, because the notice of appeal was untimely, we need not address whether the appeal should have been made to the Circuit Court for Sumner County under Tennessee

Code Annotated ' 37-1-159. Nothing in this opinion shall prohibit Father from seeking relief in the Circuit Court for McDowell County, West Virginia.

The appeal is dismissed for failure to file a timely notice of appeal. The case is remanded to the trial court for further proceedings consistent with this opinion. Father is taxed with the costs for which execution may issue.

PER CURIAM